

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RANDALL E. ELLIS,
Plaintiff,

v.

J. FRISK, et al.,
Defendants.

Case No. [15-cv-03287-SI](#)

ORDER OF DISMISSAL

Re: Dkt. Nos. 4, 9

Plaintiff has filed a "motion to vacate" his complaint. Dkt. No. 9. The court construes the motion to be a motion for a voluntary dismissal under Federal Rule of Civil Procedure 41(a) and GRANTS the motion. Dkt. No. 9. This action is DISMISSED without prejudice to plaintiff filing a new civil rights action if he ever wants to pursue his claims.

When plaintiff filed his complaint, he filed a motion for leave to proceed *in forma pauperis*; three weeks later, someone paid the filing fee on his behalf. See Dkt. No. 4 and ECF docket entry dated August 3, 2015. In his "motion to vacate" his complaint, plaintiff requested the return of the filing fee paid on his behalf. A refund is not appropriate because, once the complaint was filed, the filing fee obligation was incurred. A filing fee is owed when an action is commenced by filing a complaint, and later events do not cause that filing fee obligation to disappear. Plaintiff's request for return of the filing fee therefore is DENIED. Dkt. No. 9. Plaintiff's *in forma pauperis* application is DISMISSED as moot because the filing fee has been paid. Dkt. No. 4.

1 The clerk shall close the file.

2 **IT IS SO ORDERED.**

3 Dated: October 14, 2015

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6 SUSAN ILLSTON
United States District Judge

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